

**REMARKS**

The Patent Office (PTO) rejected claims 46-77 as being unpatentable under 35 U.S.C. § 103(a) over U.S. Patent No. 6,390,151 B1 to Christman et al. (hereinafter "Christman") in view of U.S. Patent No. 6,253,193 B1 to Ginter et al. (hereinafter "Ginter").

Applicant would like to discuss Ginter and Christman with respect to the claimed invention, and in particular discuss Ginter in more detail than provided in the last Office Action response. These references do not only not teach or suggest the invention, but also actually teach away from the invention. Furthermore, the correct motivation to combine the references to arrive at the claimed invention is not present. Applicant will discuss the relevant teachings of Ginter and Christman with arguments intertwined.

**Ginter**

Ginter does disclose an electronic appliance (item 600 in Figure 7) that can download information. Ginter describes that the electronic appliance 600 may be provided as a "portable auxillary unit" (2600), and can request music for downloading. As illustrated in Figure 71, the portable auxillary unit (2600) has a "bus interface" (2606) to connect to a "host system" (2608) for communication and requesting information.

However, Ginter's electronic appliance 600 for requesting information is not part of a fuel dispenser or part of a fuel dispensing transaction, like that of the claimed invention. The user interface of the electronic appliance 600 is not provided in the fuel dispenser, and neither are its control/hardware components, including its processing unit (SPU) 500. Thus, Ginter falls short of the essence of the present invention, which requires that the user interface be provided as part of the fuel dispenser, so that a "single fueling transaction" can account for both the purchase of fuel and music requested by a customer.

There is no teaching or suggestion that the appliance or unit (600/2600) in Ginter is "associated" with a fueling transaction, contrary to the PTO's statement on page 3, note (n) of the Final Office Action, that states "said system begins downloading the music during an associated fuel transaction." The only reference to a "gasoline station" in Ginter is where it provides that the "host system" (2608) may be portable, and convenient to locate at "commercial establishments, for example at gasoline stations . . . or other commercial establishments where

efficiency would be optimized by allowing clerks and other personnel to consummate transactions at points other than traditional cash register locations [meaning other than the normal host system coupled to the fuel dispenser].” (col. 235, ll. 8-13) (underlining added). In other words, the host system (2608) may be at a gasoline station, and a user carrying a portable auxillary unit (2600) may interface with a separate host system (2608) to provide communication. However, there is no teaching or suggestion that the host system (2608) is the same system as provided by the site controller at a gasoline station that controls the fuel dispensers, or that this communication system is at all tied into or “associated” with a “fueling transaction,” which would be necessary to provide an accounting of the fuel and music purchase as part of a “single fueling transaction,” as claimed.

Further, the PTO states on page 4, note (q) in the Final Office Action, that the “system is associated with a car wash facility, quick serve restaurant or retail terminal in a convenience store within a fueling environment.” Ginter does disclose that a portable unit (2600) could be carried by a user and plugged into a separate host system located at a convenience store, but not that the portable unit (2600) is part of or “associated” with a fuel dispenser, or integrated within the fueling transaction processing in any manner whatsoever. Further, there is no disclosure of a “car wash facility” in Ginter – only that the “[h]ost 2608 [which the portable unit (2600) communicates to] may . . . be a washing machine” appliance. (col. 229, ll. 59-62).

#### Christman

The PTO uses Christman to disclose that a fuel dispensing system can enable the customer to purchase several items or services in addition to purchasing fuel. (p. 2, note (d) in the Final Office Action). However, the obviousness rejection fails. There is no motivation to one of ordinary skill in the art to take the standalone appliance unit (600/2600) in Ginter, which is not integrated, associated with, or part of the fuel dispenser or fueling transaction, and combine its downloading requesting capability within the fuel dispenser or associated with a fueling transaction in Christman. There is no suggestion in Christman that the fuel dispenser can interface with a standalone appliance like the electronic appliance (600/2600) in Ginter. To provide otherwise is selectively choosing limitations out of the references without providing a motivational bridge to link the two different systems together. Selective extraction of isolated elements violates the Federal Circuit’s instructions in *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988).

The PTO correctly states on page 5 of the Final Office Action in support of its motivation that the portable appliance (2600) may be used for secure communication with a retail terminal. However, as discussed above, the retail terminal host discussed in Ginter is not a part of a fuel dispenser or its system, and thus this motivation fails. The motivation required to be shown with actual evidence<sup>1</sup> to make the combination is not whether the portable appliance (2600) can be carried into a gasoline station and interface with a separate retail terminal in a transaction completely removed from a fueling transaction, but rather if a teaching or suggestion that the appliance unit (600/2600) in Ginter can be associated or connected with the fuel dispenser and thus a “fueling transaction” so that the accounting can be done within a single “fuel dispensing transaction,” as claimed.

Therefore, because the PTO has not provided actual evidence to support the required motivation that the standalone electronic appliance (600/2600) in Ginter is associated, connected with, or involved in a fuel dispenser or fueling transaction, the combination fails and thus the rejection fails. The claimed invention requires that the accounting for music and a fueling transaction be done within a “single fuel dispensing transaction” necessarily requiring that the standalone electronic appliance (600/2600) in Ginter be connected with the fuel dispenser or fueling transaction operationally, which it is not.

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<sup>1</sup> *In re Dembiczak*, 175 F.3d 994, 999 (Fed.Cir. 1999); see also *In re Lee*, 277 F.3d 1338, 1343-44 (Fed. Cir. 2002); MPEP § 2143.01.

Respectfully submitted,

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